

REMARKS/ARGUMENTS

This Amendment is being filed in response to the final Official Action of March 17, 2009, and concurrent with a Request for Continued Examination (RCE). The final Official Action continues to reject Claims 1-4, 10-13, 19-22 and 28-31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,223,291 to Puhl et al., in view of U.S. Patent No. 7,346,168 to Chou et al., and further in view of U.S. Patent Application Publication No. 2004/0003266 to Moshir et al. The Official Action also continues to reject Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of U.S. Patent Application Publication No. 2004/0176080 to Chakravorty et al.; reject Claims 6, 7, 15, 16, 24, 25, 33 and 34 as being unpatentable over Puhl in view of Chou, Moshir and Chakravorty, and further in view of U.S. Patent Application Publication No. 2003/0147369 to Singh et al.; and reject Claims 8, 9, 17, 18, 26, 27, 35 and 36 as being unpatentable over Puhl in view of Chou, Moshir and Singh. As explained below, Applicants maintain that the claimed invention is patentably distinct from Puhl, Chou, Moshir, Chakravorty and Singh, taken individually or in any proper combination. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. In view of the amendments to the claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

A. Claim Construction and Prima Facie Anticipation/Obviousness

Initially, Applicants note that the Patent Office has the initial burden of proof in establishing *prima facie* anticipation or obviousness of a claimed invention under 35 U.S.C. § 102 or § 103. *In re Warner*, 379 F.3d 1011, 1016 (CCPA 1967). To make a fair review of the merits of a *prima facie* case of anticipation or obviousness, “[t]he Examiner must make specific findings as to claim construction.” *Ex parte Beery*, Appeal No. 2008-0543, Application No. 09/954,823 (BPAI Sep. 29, 2008) (emphasis added); *Ex parte Blankenstein et al.*, Appeal No. 2007-2872, Application No. 10/116,312 (BPAI Aug. 26, 2008); and *see Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997); and MPEP §§ 706, 706.07.

In the instant case, the Office continues to fail to provide Applicants with a sufficient

claim construction or interpretation of the cited references so as to enable the Applicants to make a fair review of the merits of the case of anticipation or obviousness proffered by the Examiner, or to effectively reply or readily judge the advisability of an appeal. The Examiner continues to quote or paraphrase Applicants' claim language with annotated citations to figures, or column and line numbers of the cited references. Now, however, the Examiner further generally indicates that the elements recited by the claims are being construed as known to those skilled in the art, and as explained in Applicants' specification. But the Examiner still does not provide sufficient findings or other explanation regarding Applicants' claims, the cited references, or the application of the cited references to Applicants' claims. The Board of Patent Appeals has found that the mere citing of passages of the prior art is insufficient to meet the Examiner's "initial burden of pointing out where the applied prior art teaches or suggests Appellant's invention." *Ex parte* Beery, Appeal No. 2008-0543, page 5. As stated by the Board in *Ex parte* Beery, "The difficulty we have with the Examiner's position is its failure to specifically point out where in the cited passages there is found a teaching of each of the disputed claim limitations." *Id.* (emphasis added).

Applicants therefore respectfully submit that the Examiner has failed to establish *prima facie* anticipation or obviousness of the claimed invention. Again, should the Examiner continue to reject the claims as being unpatentable over the same or any other ground, Applicants respectfully request that the Examiner submit on the record specific findings as to the construction being applied to the claims, an explanation of the references being cited against the claims, and how those references disclose recited features of the claims. For purposes of responding to the present Official Action, Applicants presume the recited elements are being construed as indicated on pages 2-4 of the Official Action – those pages citing passages from Applicants' specification.

B. Claims 1-4, 10-13, 19-22 and 28-31 are Patentable

As indicated above, the Claims 1-4, 10-13, 19-22 and 28-31 stand rejected as being unpatentable over Puhl in view of Chou, and further in view of Moshir.

I. Puhl

As background, Puhl discloses a secure wireless electronic-commerce system that utilizes digital product certificates and digital license certificates. In the passage cited for disclosing aspects of the claimed invention, Puhl discloses a method of merchant (also referred to as an attribute authority – AA) delivering content to a client and receiving payment for that content. Initially, the merchant authenticates itself to the client by delivering a digital certificate to the client, which the client may verify via a certificate authority (CA). If the merchant is verified, the client delivers payment to the merchant for a content item, which the merchant then delivers to the client. As disclosed, the content item may comprise a software patch update, which may be delivered to the client without the user's consent or awareness of the update.

According to one aspect of the claimed invention, as reflected by independent Claim 1, a system is provided for downloading pushed content. As recited, the system includes a terminal comprising a processor configured to receive service loading content that identifies download content and has a digital signature. The processor is configured to authenticate the service loading content based upon the digital signature, and when the service loading content is authenticated, pull the download content to the terminal. In this regard, the processor is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of the terminal. The processor is further configured to determine when an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and when an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion.

In contrast to amended independent Claim 1, Applicants once again submit that Puhl does not teach or suggest a terminal receiving service loading content (including a digital signature), and in response thereto and without user interaction, authenticating the service loading content (based on the digital signature) and pulling download content identified by the service loading content. That is, nowhere does Puhl disclose a terminal receiving service loading content that identifies download content, and also has a digital signature that is authenticated before the

terminal pulls the download content. In the passage of Puhl cited in the Official Action (i.e., col. 13, lines 30-46; and col. 13, lines 47-67), for example, the client may receive a digital signature of a merchant to verify the merchant before paying for, and receiving, a content item from that merchant. In Puhl, however, the client does not receive the merchant's digital signature in service loading content that also identifies download content that is pulled by the client in response to receiving the service loading content and without user interaction (i.e., independent of interaction from a user), similar to amended independent Claim 1.

In another passage of Puhl cited in the Official Action (i.e., col. 8, lines 2-4, and 10-12), software on the client may be updated or upgraded without the user being aware of the upgrade, and without the user's consent. Even considering this passage, however, Puhl still does not teach or suggest that its client "pulls" download content in response to receiving service loading content (identifying the download content and including a digital signature) and without user interaction, as per amended independent Claim 1. Notably, the Official Action cites separate features of Puhl for allegedly corresponding to the recited terminal receiving service loading content and pulling content in response thereto. Nowhere has the Official Action cited or otherwise provided a coherent explanation of how Puhl supposedly teaches or suggests any manner by which its disclosed client receives service loading content and responds thereto in a manner satisfying amended independent Claim 1.

In response to the foregoing, the Examiner in the final Official Action states:

The examiner disagrees with the applicant's argument and analysis because the alleged features are admitted by the applicant and very well known to one of ordinary skill in the art [applicant's disclosure 0005-0006 and 0009] and also disclosed by Puhl prior art (Pul; Figures 3: 200-230). Puhl discloses license certificate to down load to the user's phone and requested by user. The phone validates the license certificate and once validated the phone either downloads the content (product purchased). Each certificate is to bind or associate the content or software product to a particular name or content identifier (Puhl; colun 5: lines 33-45). However Puhl does not disclose "authenticating the service loading content and pulling the downloading content independent of interaction for a user of the terminal" which amounts to "pushing" the content. However these features are disclosed by Chou as shown in the office action which is (column 2: lines 10-14; column 3: lines 30-50; column 6: lines 21-67; column 7, lines 1-7).

Official Action of Mar. 17, 2009, pages 4-5. Applicants fail to see how the issue of whether Applicants' have or have not admitted that the aforementioned feature of amended independent Claim 1 is well known bears on the issue of whether Puhl discloses the feature. Nonetheless, contrary to the Examiner's assertion, Applicants have not in fact admitted that the feature is well known. That is, nowhere in paragraphs [0005], [0006], [0009] or any other paragraph of Applicants' specification (citations to the corresponding U.S. Patent Application Publication No. 2005/0083929), do Applicants admit that it is well known for a terminal to receive service loading content (including a digital signature), and in response thereto and without user interaction, authenticate the service loading content (based on the digital signature) and pull download content identified by the service loading content, as per amended independent Claim 1.

Moreover and further illustrating Applicants' issue with the Official Actions' lack of sufficient claim construction or interpretation of the cited references, Applicants note that the Examiner indicates that the recitation "service loading content" in Applicants' claims is interpreted as disclosed in Applicants' specification, and particularly in paragraph [0009] of Applicants' specification. *See* Official Action of Mar. 17, 2009, pages 3-4. As disclosed in paragraph [0009], in accordance with service loading, a client receives service loading content and, upon receipt of that content, automatically downloads (pulls) content identified by the service loading content without end-user interaction (i.e., independent of interaction from a user). As applied to amended independent Claim 1, however, the Examiner alleges that Puhl discloses a client receiving service loading content, but concedes that Puhl does not disclose that the client automatically downloads (pulls) content without end-user interaction (i.e., independent of interaction from a user). And while Applicants agree that Puhl does not disclose a client automatically downloading content without user interaction, Applicants submit that Puhl also does not teach or suggest a client receiving service loading content – much less service loading content including a digital signature.

2. *Chou and Moshir*

Similar to Puhl, Applicants respectfully submit that neither Chou nor Moshir, taken

individually or in any proper combination, teaches or suggests the aforementioned features of amended independent Claim 1. That is, neither Chou nor Moshir, taken individually or in any proper combination, teaches or suggests a terminal receiving service loading content, and in response thereto and without user interaction, authenticating the service loading content and pulling download content identified by the service loading content, as per amended independent Claim 1. The Official Action cites Chou for allegedly disclosing “authenticating service loading content.” Official Action of Mar. 17, 2008, page 6.

Chou does disclose the concept of service loading content within the Wireless Application Protocol (WAP) architecture. *See* Chou, col. 6, lines 39-41 (“Service Loading (SL): this content type allows a user agent on a user device to load and execute a service, specified by a URI, without user intervention”). However, Chou does not further disclose any service loading content identifying download content and having a digital signature upon which the service loading content may be authenticated, as per amended independent Claim 1. Applicants note that two of the cited passages of Chou (i.e., col. 2, lines 10-24; and col. 3, lines 30-50) disclose an application server performing user authentication, and then pushing service content to an application layer broker. However, these passages do not teach or suggest that the application server authenticates service loading content based on its included digital signature, or in response to its receipt, pulling download content.

As to the final cited passage of Chou (i.e., col. 6, line 21 – col. 7, line 7), it discloses a wireless device receiving a service indication (SI) message, and pulling content by following a uniform resource interface (URI) included in the service indication message. Applicant respectfully submits, however, that a service indication message is not the same as service loading content, and in fact Chou describes the two types of messages as being different from one another. *See* Chou, col. 6, lines 34-41. Moreover, even with respect to a service indication message, Chou does not teach or suggest that it includes a digital signature that is authenticated by the wireless device that pulls content, similar to the service loading content of amended independent Claim 1. Rather, Chou discloses verifying a timestamp accompanying a URI to prevent unauthorized access to the service content linked by the URI.

Applicants therefore respectfully submit that amended independent Claim 1, and by

dependency Claims 2-9, is patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants also respectfully submit that independent Claims 10, 19 and 28 recite subject matter similar to that of amended independent Claim 1, including at least the service-loading content and download-recovery features. Thus, Applicants also respectfully submit that independent Claims 10, 19 and 28, and by dependency Claims 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination, for reasons similar to those provided above with respect to amended independent Claim 1.

3. Claims 4, 13, 22 and 31

In addition to the foregoing, Applicants respectfully submit that various ones of dependent Claims 2-9, 11-18, 20-27 and 29-36 recite features further patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. For example, among other recitations, Claims 4, 13, 22 and 31 recite that the service loading content identifies an origin server associated with the download content, and that the terminal is configured to request and receive the download content from the origin server when the service loading content is authenticated.

The final Official Action continues to allege that Puhl discloses the features of Claims 4, 13, 22 and 31, but perplexedly appears to cite Applicants' application in support of this assertion. That is, in alleging that Puhl discloses service loading content identifying the origin server associated therewith, the Official Action cites "para. 0009 of the background of the applicant invention." Official Action of Mar. 17, 2009, page 8. To the extent the final Official Action intended to cite paragraph 0009 of the background of Puhl, Applicants note that the background section of Puhl does not have nine paragraphs or otherwise refer to any of the paragraphs of its background section as being the ninth paragraph.

To the extent that the final Official Action did in fact intend to cite the background section of Applicants application as supposedly disclosing the aforementioned feature, Applicants respectfully submit that paragraph [0009] of Applicants' specification does not in fact disclose a terminal configured to request and receive the download content from an origin server

(identified by service loading content as being associated with the download content) when the service loading content is authenticated. Moreover, Applicants respectfully submit that the Office has not met its burden of not only citing prior art disclosing every element of the claimed invention, but also providing an apparent reason to combine this feature with those allegedly disclosed by Puhl, Chou and Moshir to teach the claimed invention. *See KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740–41, 82 USPQ2d (BNA) 1385, 1396 (2007) (obviousness often requires determining whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue, and that to facilitate review, this analysis should be made explicit). At a minimum, however, Applicants submit that the ambiguity in the citation to a claimed feature attributed to Puhl affects Applicants' ability to effectively reply to the final Official Action. *See* MPEP § 710.06.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1-4, 10-13, 19-22 and 28-31 as being unpatentable over Puhl in view of Chou, and further in view of Moshir is overcome.

C. Claims 5, 14, 23 and 32 are Patentable

The Official Action also rejects Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of Chakravorty. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants respectfully submit that Chakravorty does not cure the deficiencies of Puhl, Chou and Moshir. That is, even considering Chakravorty, none of Puhl, Chou, Moshir or Chakravorty, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir and/or Chakravorty to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir and Chakravorty, taken individually or in any proper combination.

Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being

unpatentable over Puhl in view of Chou and Moshir, and further in view of Chakravorty, is overcome.

D. Claims 6, 7, 15, 16, 24, 25, 33 and 34 are Patentable

The Official Action rejects Claims 6, 7, 15, 16, 24, 25, 33 and 34 as being unpatentable over Puhl in view of Chou, Moshir and Chakravorty, and further in view of Singh. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou, Moshir and Chakravorty, taken individually or in any proper combination. Applicants respectfully submit that Singh does not cure the deficiencies of Puhl, Chou, Moshir and Chakravorty. That is, even considering Singh, none of Puhl, Chou, Moshir, Chakravorty or Singh, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir, Chakravorty and/or Singh to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir, Chakravorty and Singh, taken individually or in any proper combination.

Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou, Moshir and Chakravorty, and further in view of Singh, is overcome.

E. Claims 8, 9, 17, 18, 26, 27, 35 and 36 are Patentable

The Official Action rejects Claims 8, 9, 17, 18, 26, 27, 35 and 36 as being unpatentable over Puhl in view of Chou, Moshir and Singh. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants respectfully submit that Singh does not cure the deficiencies of Puhl, Chou and Moshir. That is, even considering Singh, none of Puhl, Chou, Moshir or Singh, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited

Appl. No.: 10/689,396
Filed: October 20, 2003
Amdt. Dated June 3, 2009

by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir and/or Singh to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir and Singh, taken individually or in any proper combination.

Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of Singh, is overcome.

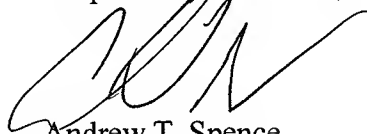
Appl. No.: 10/689,396
Filed: October 20, 2003
Amdt. Dated June 3, 2009

CONCLUSION

In view of the amendments to the claims and the remarks presented herein, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Andrew T. Spence
Registration No. 45,699

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL02/31335453v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON JUNE 3, 2009.